

Message Text

CONFIDENTIAL

PAGE 01 SANTIA 05087 01 OF 03 080214Z
ACTION ARA-14

INFO OCT-01 ISO-00 HA-05 IO-13 CIAE-00 DODE-00 PM-05
H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02
SS-15 ICA-11 TRSE-00 /086 W
-----058495 080549Z /21

R 071940Z JUL 78
FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 9767
INFO AMEMBASSY BUENOS AIRES
AMEMBASSY MONTEVIDEO

C O N F I D E N T I A L SECTION 1 OF 3 SANTIAGO 5087

E.O. 11652: GDS
TAGS: PGOV SHUM PINT CI
SUBJECT: HUMAN RIGHTS AND THE CHILEAN LEGAL/JUDICIAL SYSTEM

REF: A) STATE 136322, B) SANTIAGO 4263, C) SANTIAGO 4005

1. SUMMARY: THE CHILEAN JUDICIAL SYSTEM HAS BEEN CRITICIZED FOR ITS FAILURE TO DO MORE TO PROTECT AND ENSURE HUMAN RIGHTS SINCE THE MILITARY COUP OF 1973. SOME OF THAT CRITICISM IS UNFAIR -- THERE ARE SEVERE LIMITS ON HOW FAR ANY JUDICIAL SYSTEM CAN RESTRAIN A DICTATORIAL EXECUTIVE FROM ABUSING ITS OWN CITIZENS. ON THE OTHER HAND, THE JUDICIARY IN CHILE HAS BEEN EXCESSIVELY TIMID IN ASSERTING THOSE RIGHTS IT RETAINED, OR PROBING THE LIMITS OF JUDICIAL RIGHTS DURING THE VARIOUS STAGES OF EMERGENCY POWERS. AT PRESENT BOTH TRENDS ARE FAVORABLE: THE GOC HAS LARGELY (PERHAPS ENTIRELY) CEASED THE MOST VIOLET FORMS OF HUMAN RIGHTS VIOLATION; THE JUDICIARY AND THE LEGAL/JUDICIAL SYSTEM MORE GENERALLY ARE BECOMING BOLDER. ALTHOUGH THERE IS NOT YET ANY INSTITUTIONAL GUARANTEE AGAINST REMISSION, AND THE EXECUTIVE RETAINS SOME EXCEPTIONAL POWERS, DE FACTO OPERATION OF THE LEGAL/JUDICIAL SYSTEM IS NEAR NORMAL. END SUMMARY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 SANTIA 05087 01 OF 03 080214Z

2. WHY AND HOW NOTE. THIS MESSAGE IS THE SECOND OF THREE RESPONDING TO THE REQUESTS CONTAINED IN REFTL (A). THE PREVIOUS (REFTEL B) DEALT WITH THE AMNESTY LAW OF APRIL 18, 1978. WE STILL OWE THE DEPARTMENT AN ANALYSIS OF GOC ACTION TO DATE ON REQUESTS BY CHILEANS TO RETURN TO CHILE. WHAT FOLLOWS IS THIS EMBASSY'S LARGELY

IMPRESSIONISTIC ASSESSMENT OF THE STATE OF THE LEGAL/JUDICIAL INSTITUTION IN PINOCHET'S CHILE AT MID-YEAR 1978. WE HAVE POLLED A RANGE OF LAWYERS AND HAVE INTEGRATED THEIR VIEWPOINTS, AND THE SPECIFIC INFORMATION THEY PROVIDED, INTO A NET ASSESSMENT. THE LAWYERS INVOLVED RANGE FROM THOSE WORKING WITH HUMAN RIGHTS PROBLEMS ON A FULL-TIME BASIS TO ONE IN THE GOC. MOST CANNOT BE TERMED SYMPATHETIC TO THE GOC. THERE WERE, HOWEVER, NO POINTS OF MAJOR AND SHARP DISAGREEMENT.

3. BACKGROUND. THE WORST HUMAN RIGHTS ABUSES THAT HAVE OCCURRED IN CHILE SINCE 1973 CONSIST OF OFFICIAL ACTS OUTSIDE THE PURVIEW OF LEGAL CONSTRAINTS (CIVIL OR MILITARY). BECAUSE AGENCIES OR INDIVIDUALS ACTED ILLEGALLY, DENIED SO DOING, AND WERE PROTECTED BY THE EXECUTIVE POWER, THERE WAS LITTLE THE JUDICIAL SYSTEM COULD DO. THESE FORMS OF ABUSE HAVE NOW LARGELY CEASED: THERE HAVE BEEN RECENT CONFIRMED INCIDENTS OF TORTURE (BEYOND NORMAL POLICE STRONGARM METHODS), THERE HAVE BEEN NO MURDERS (DISAPPEARANCES) SO FAR THIS YEAR, AND THE ONLY CLEARLY ILLEGAL INCIDENT OF DETENTION (PERHAPS ALSO INVOLVING TORTURE) WAS THAT OF HAYDEE DONOSO PALMA (SANTIAGO 2212). AS IN ANY DICTATORIAL SYSTEM THERE IS NO ADEQUATE GUARANTEE AGAINST BACKSLIDING. BUT THE OUTLOOK IS NOW HOPEFUL.

4. LEAVING ASIDE TORTURE AND MURDER, LEGAL GUARANTEES
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SANTIA 05087 01 OF 03 080214Z

FOR DETAINEES THROUGH 1976 WERE MARGINAL. UNDER STATE OF SIEGE POWERS AS THEY WERE THEN IMPLEMENTED, THE MILITARY SYSTEM OF JUSTICE PERMITTED INDEFINITE DETENTION WITHOUT CHARGES OF SPECIFIC CRIMES, DENIAL OF ACCESS TO COUNSEL, APPEALS ONLY WITHIN THE MILITARY CHAIN OF COMMAND, CLOSED TRIALS, DENIAL OF HABEAS CORPUS, AND ADMISSION OF EVIDENCE OBTAINED UNDER DURESS. EXCESSIVE TIMIDITY ON THE PART OF THE CIVILIAN COURTS -- MOST NOTABLY THE COURTS OF APPEAL AND THE SUPREME COURT -- CONTRIBUTED TO THE HUMAN RIGHTS FAILURES OF THE LEGAL/JUDICIAL SYSTEM. THE CIVILIAN COURTS MAINTAINED THAT THE GOC ACTED WITHIN CONSTITUTIONALLY PERMITTED EMERGENCY POWERS IN DETAINING AND TRYING PEOPLE AND, FACED WITH THE GOC DENIAL OF COMMISSION OF ILLEGAL ACTS, CHOSE BY AND LARGE NOT TO

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 SANTIA 05087 02 OF 03 080217Z
ACTION ARA-14

INFO OCT-01 ISO-00 HA-05 IO-13 CIAE-00 DODE-00 PM-05
H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02
SS-15 ICA-11 TRSE-00 /086 W
-----058577 080553Z /21

R 071940Z JUL 78
FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 9768
INFO AMEMBASSY BUENOS AIRES
AMEMBASSY MONTEVIDEO

C O N F I D E N T I A L SECTION 2 OF 3 SANTIAGO 5087

ASSERT ITS REMAINING AUTHORITY OR TAKE ISSUE WITH THE
GOVERNMENT.

5. DECREE LAW 1009 IN MAY, 1975 WAS A WEAK
EFFORT TO CURB GOC INTERNAL SECURITY FORCES EXCESSES
AND RESTORE A CERTAIN "LEGALITY" TO IT ALL. DL 1009 SET
CONDITIONS FOR PROMPT NOTIFICATION TO FAMILIES OF DETAINEES
AND SET LIMITS ON HOW LONG DETAINEES MIGHT BE HELD WITHOUT
REGULARIZING THEIR STATUS. BY AND LARGE, THE DECREE WAS
IGNORED. AN IMPLICIT RECOGNITION THAT IT WAS NOT EN-
FORCED WAS THE SIGNING OF SUPREME DECREE 187 OF
JANUARY, 1976. SD 187 ESTABLISHED FURTHER REGULATIONS
COMPLEMENTING DL 1009: IT SPECIFIED PLACES IN WHICH
STATE OF SIEGE DETAINEES COULD BE HELD; PRESCRIBED MEDI-
CAL EXAMINATION UPON ADMISSION AND EXIT; AND, MOST IM-
PORTANTLY, AUTHORIZED ON-SITE, UNANNOUNCED INSPECTIONS OF
DETENTION CENTERS BY THE MINISTER OF JUSTICE AND THE
SUPREME COURT PRESIDENT. EVEN SO, THERE WERE SPECIFIC
CASES WHERE SD 187 PROVISIONS WERE NOT FOLLOWED. WHILE
NOT TOTALLY SATISFACTORY, IT AT LEAST PERMITTED THE
MINISTER OF JUSTICE AND SUPREME COURT PRESIDENT A SMALL
ROLE WHICH PROVED TO HAVE A DAMPENING EFFECT ON RAMPANT
HUMAN RIGHTS ABUSES.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 SANTIA 05087 02 OF 03 080217Z

6. CURRENT STATUS -- GRADUAL, ACCELERATING IMPROVEMENTS.
THE ABILITY OF THE LEGAL/JUDICIAL SYSTEM TO PROTECT AND
SUPPORT HUMAN RIGHTS HAS BEEN IMPROVING SINCE AT LEAST
THE END OF 1976. UNDER PRESENT CIRCUMSTANCES IMPROVEMENT
COMES ALMOST AUTOMATICALLY IN THE WAKE OF REDUCED
EXECUTIVE POWER. THE MOST IMPORTANT MILESTONE IN THIS

REGARD WAS THE LIFTING OF THE STATE OF SIEGE MARCH 11, 1978. REFTEL (C) REPORTED THAT, WITH THE END OF THE STATE OF SIEGE, THE EXECUTIVE LOST THE POWER TO: DEPRIVE CHILEANS OF THEIR NATIONALITY; DETAIN THEM INDEFINITELY WITHOUT CHARGE (NOT RESORTED TO SINCE MID-1977), INTERNALLY BANISH THEM; AND TRY THEM IN MILITARY COURT OF EMERGENCY (EXTENDED

FOR SIX MONTHS) AUTHORITY, THE ELIMINATION OF ITS MORE DRACONIC LEGAL POWERS SIGNALS AN INCREASED RESPECT FOR INDIVIDUAL RIGHTS AND A GRADUAL RETURN TO THE LEGAL NORM.

7. CIVILIAN COURTS, PERHAPS EMBOLDENED BY HUMAN RIGHTS PROGRESS OVER THE LAST TWO YEARS, APPEAR TO BE ASSERTING THEIR INDEPENDENCE. THE DECEMBER, 1977 SUPREME COURT DECISION RESTORING CITIZENSHIP TO EXILED LABOR LEADER HUMBERTO ELGUETA REPRESENTED A SUCCESSFUL CHALLENGE TO THE GOC -- IT NEVER AGAIN RESORTED TO THIS STATE OF SIEGE POWER. A CIVILIAN COURT DECISION IN JANUARY, 1978 RULING THAT THE GOC COULD BANISH PEOPLE TO A DESIGNATED PROVINCE BUT NOT TO A SPECIFIC PLACE WITHIN THE PROVINCE ALSO SEVERELY HAMPERED THE EXECUTIVE'S AUTHORITY. THE OVERWHELMING PRESENT SENTIMENT OF CIVILIAN JUDGES THAT THE APRIL 18 AMNESTY DOES NOT AUTOMATICALLY ALLOW COURTS TO CLOSE (SOBRESEIR) INQUESTS IN CASES -- MOST DISAP-
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SANTIA 05087 02 OF 03 080217Z

PEARANCES -- DEVELOPED DURING THE PERIOD SEPTEMBER 11, 1973 TO MARCH 10, 1978, ADDS TO A GROWING SENSE OF JUDICIAL REASSERTION.

8. A SIGNIFICANT CHANGE, AS REPORTED IN REF B, IS THE END TO COURTS MARTIAL USING THE STRICT TIME-OF-WAR PROCEDURES UNDER THE STATE OF SIEGE. MILITARY COURTS CONTINUE TO TRY INTERNAL SECURITY CASES UNDER THE 1958 LAW OF INTERNAL SECURITY OF THE STATE (PLOTING TO OVERTHROW THE GOVERNMENT, ILLEGAL POSSESSION OF USE OF FIREARMS, ETC.) AND THE ARMS CONTROL ACT, BUT UNDER TIME-OF-PEACE RULES PERMITTING CIVILIAN JUDICIAL REVIEW. THERE ARE LESS THAN 20 SUCH CASES STILL PENDING. IN SOME CASES INVOLVING INTERNAL SECURITY CRIMES, MILITARY COURTS CONDUCT THE INITIAL INVESTIGATIONS AND THEN TURN THEM OVER TO CIVILIAN COURTS.

9. NOTICEABLE TECHNICAL IMPROVEMENTS IN THE OPERATION OF CHILEAN JUSTICE INCLUDE THE FOLLOWING:

-- DETAINEES ARE FOR THE MOST PART ARRAIGNED WITHIN 48 HOURS AFTER ARREST (THE MAXIMUM PERMITTED IN NORMAL

TIMES).

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 SANTIA 05087 03 OF 03 080534Z
ACTION ARA-14

INFO OCT-01 ISO-00 HA-05 IO-13 CIAE-00 DODE-00 PM-05
H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02
SS-15 ICA-11 TRSE-00 /086 W
-----060722 080553Z /21

R 071940Z JUL 78
FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 9769
INFO AMEMBASSY BUENOS AIRES
AMEMBASSY MONTEVIDEO

C O N F I D E N T I A L SECTION 3 OF 3 SANTIAGO 5087

-- TRIALS ARE MORE OPEN TO THE PUBLIC AND THE PRESS.

-- NO EFFORT IS MADE TO HAMPER THE DEFENSE IN ITS
PRESENTATION OF ITS CASE.

-- MODIFICATIONS TO THE PENAL CODE ENABLES MORE PRI-
SONERS TO SECURE PROVISIONAL LIBERTY OR RELEASE UNDER
BOND (SANTIAGO A-31).

-- DEFENSE LAWYERS HAVE SATISFACTORY ACCESS TO COURT
RECORDS, EXCEPT WHEN THE CASE IS IN AN INVESTIGATIVE
PHASE (I.E., A RETURN TO THE NORMAL, PRE-1973 SITUATION).

10. BUT ALL IS NOT YET NORMAL. TO A SUBSTANTIAL DEGREE,
THE LEGAL FRAMEWORK OF MILITARY RULE IN CHILE STILL PER-
MITS CONDITIONS AND ACTS WHICH, WHILE IN A SENSE LEGAL,
CONSTITUTE ABRIDGEMENTS OF HUMAN RIGHTS. INTERNAL SECURITY
FORCES AND THE EXECUTIVE RETAIN THE POWER TO HOLD A PER-
SON FOR 10 PLUS 5 DAYS, BEFORE PLACING HIM AT THE DISPOSI-
TION OF A COURT. A PERSON HELD IN SUCH A STATE IS DENIED
RIGHT TO COUNSEL OR TO SEE FAMILY MEMBERS. AND, AS
HUMAN RIGHTS LAWYERS EMPHASIZE, THIS PERIOD ALLOWS TIME
FOR BRUISES AND OTHER SIGNS OF MISTREATMENT TO HEAL BEFORE
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 SANTIA 05087 03 OF 03 080534Z

ARRAIGNMENT. DURING SUCH A LENGTHY PERIOD THERE IS NO PRACTICAL PROTECTION AGAINST MISTREATMENT. THOUGH SUCH DETENTION IS LITTLE EMPLOYED NOW, IT REMAINS A DORMANT TOOL WHICH THE GOC CAN RESORT TO IN DEALING WITH ITS POLITICAL OPPOSITION. THE GOC UNDER DL 81 (NOVEMBER, 1973) RETAINS ITS POWER TO EXPEL PEOPLE CONSIDERED A THREAT TO NATIONAL SECURITY, WHILE DENYING RE-ENTRY UNDER DL 81 AND DL 604 -- WHICH IT HAS NOT HESITATED TO EMPLOY IN ITS SELECTIVE CHOOSING OF WHO IS ALLOWED TO RETURN UNDER THE APRIL AMNESTY. THE COURTS HAVE YET TO CHALLENGE THE GOC ON THESE FRONTS.

11. A LEGAL NORM ALLOWING THE GOC A CHECK ON THE JUDICIARY IS THE APPOINTMENT OF JUDGES. PINOCHET, LIKE HIS PREDECESSORS, APPOINTS ALL CIVILIAN JUDGES, PICKING THOSE MOST SYMPATHETIC TO HIS REGIME. THERE ARE INDICATIONS THAT PINOCHET SUPPORTED AND INFLUENCED THE RECENT ELECTION OF SUPREME COURT PRESIDENT ISRAEL BORQUEZ. IT IS WORTH NOTING, ALSO THAT THERE WAS A SEMI-PURGE OF JUDICIAL AUTHORITIES SOON AFTER THE JUNTA TOOK POWER. THUS, THE GOC ENSURED THAT THE JUDICIARY WOULD BE GENERALLY SYMPATHETIC TO THE AIMS OF THE COUP AND, ACCORDINGLY, THAT LESS INTIMIDATION WOULD BE NECESSARY.

12. CONCLUSION. LIKE MUCH ELSE IN CHILE RIGHT NOW, THERE IS MARKED BUT STILL FRAGILE IMPROVEMENT IN THE LEGAL/JUDICIAL SPHERE. RECENT IMPROVEMENTS ARE DUE IN PART TO THE WEAKNESSES AND VULNERABILITIES OF THE PINOCHET REGIME BUT EVEN MORE, WE JUDGE, TO A REALIZATION ON THE PART OF MANY JUNTA SUPPORTERS THAT RESTRAINTS ON THE INDEPENDENCE OF THE LEGAL/JUDICIAL SYSTEM ARE INCREASINGLY HARD TO JUSTIFY. REVERSAL OF PRESENT FAVORABLE TRENDS IS CERTAINLY POSSIBLE BUT, AS OF NOW, UNLIKELY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SANTIA 05087 03 OF 03 080534Z

LANDAU

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS, JUDICIAL BRANCH, POLITICAL FREEDOM
Control Number: n/a
Copy: SINGLE
Draft Date: 07 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978SANTIA05087
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780280-0440
Format: TEL
From: SANTIAGO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780785/aaaactup.tel
Line Count: 320
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 22566479-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 STATE 136322, 78 SANTIAGO 4263, 78 SANTIAGO 4005
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2085933
Secure: OPEN
Status: NATIVE
Subject: HUMAN RIGHTS AND THE CHILEAN LEGAL/JUDICIAL SYSTEM
TAGS: PGOV, SHUM, PINT, CI
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/22566479-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014